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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1909

NORMAN ALPIN, *Petitioner*

v.

INTERNATIONAL LADIES GARMENT WORKERS UNION, AFL-CIO, *Respondent.*

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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RESTATEMENT OF THE CASE

In his Answer before the District Court, petitioner set out the arbitration procedure of the collective bargaining agreement, pointing out those provisions of the paragraph which stated that arbitration shall be the *exclusive* remedy and tribunal for all disputes. There was absolutely no obligation for petitioner to raise the issue of fraud in the inducement. His Answer said in effect "let's do what we have previously agreed upon

and abitrate". It bears repeating that commencement of the action in the District Court by the union was violative of its own agreement.

Additionally petitioner is compelled to point out that the Brief in Opposition erroneously refers to the Union members as employees of Petitioner Norman Alfin, when, indeed, they were employed by Ashland Industries. Alfin was a shareholder and officer of Ashland and he signed the agreement as an officer and as an individual guarantor, however, he employed no one.

REASONS FOR GRANTING THE WRIT

Respondent's reliance on *John Wiley & Sons* v. *Livingston,* 376 U.S. 543, 84 S.Ct. 909 (1964) and *Atkinson* v. *Sinclair Refining, Inc.* 370 U.S. 238, 82 S.Ct. 1318 to support its position is miscast. In those cases one of the parties was resisting arbitration. In the present matter both parties sought arbitration. The Union requested the stay in the District Court. It was only after it had Professor Murphy's decision that the Union sought a return to the District Court.

Respondent's Brief (p. 4) suggests only one issue was "referred" to the arbitrator and further (p. 6) it states "The arbitrator's jurisdiction under the district court's referral order was confined to determining liability under the terms and provisions of a valid collective bargaining contract". When the matter was submitted to the arbitrator no limits were placed on his authority. His job was to resolve the whole dispute.

Finally a misstatement in the Brief in Opposition (p. 6) should be corrected. The union never tried, prior to commencing the action, to institute arbitration.

If it had, all it needed to do was call upon the Federal Mediation and Conciliation Service to appoint an arbitrator pursuant to the contract.

Respectfully submitted,

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